

Citation: Department of Environmental Quality, Water Resources Protection, R
323.1041 - R 323.1117

Jurisdiction: Michigan

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Section Title: R 323.1098 Antidegradation (Integrated)

Subject water, surface water, water quality, standard

Terms:

Source: Integrated Document

R 323.1098 ~~Antidegradation~~.

Rule 98. (1) This rule applies to any action or activity pursuant to part 31 of Act No. 451 of the Public Acts of 1994, as amended, being § 324.3101 et seq. of the Michigan Compiled Laws, that is anticipated to result in a new or increased loading of pollutants by any source to surface waters of the state and for which independent regulatory authority exists requiring compliance with water quality standards.

(2) For all waters, the level of water quality necessary to protect existing uses shall be maintained and protected. Where designated uses of the water body are not attained, there shall be no lowering of the water quality with respect to the pollutant or pollutants that are causing the nonattainment.

(3) Where, for individual pollutants, the quality of the waters is better than the water quality standards prescribed by these rules, that water shall be considered high quality and that quality shall be maintained and protected unless allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. For high quality waters, no action resulting in the lowering of water quality shall occur unless the provisions of this rule have been complied with.

(4) A person applying for a control document in a high quality water or a Lake Superior basin-outstanding international resource water for a new or increased loading of pollutants shall show how the discharge is exempted under subrule (8) or (9) of this rule or provide a demonstration as follows:

(a) The applicant shall identify the social or economic development and the benefits to the area in which the waters are located that would be forgone if the new or increased discharge is not allowed. The factors to be addressed may include any of the following:

- (i) Employment increases.
- (ii) Production level increases.
- (iii) Employment reductions avoidance.
- (iv) Efficiency increases.
- (v) Industrial, commercial, or residential growth.
- (vi) Environmental or public health problem corrections.
- (vii) Economic or social benefits to the community.

(b) For discharges of BCCs that result from operations at the facility, the applicant shall include an identification of the alternatives evaluated and the alternatives to be implemented to comply with the following requirements:

- (i) The discharger shall minimize the new or increased loading of the BCC by implementation of any cost-effective pollution prevention alternatives and techniques

which have been adequately demonstrated and which are reasonably available to the discharger that would eliminate or significantly reduce the new or increased loading of the BCC.

(ii) If pollution prevention alternatives implemented under paragraph (i) of this subdivision do not eliminate the new or increased loading of the BCC, then the discharger shall evaluate alternative or enhanced treatment techniques which have been adequately demonstrated and which are reasonably available to the discharger that would eliminate the new or increased loading of the BCC and shall implement the techniques that have a cost that is reasonable relative to the cost of treatment necessary to achieve applicable effluent limitations.

(iii) If the new or increased loading is a point source discharge to a Lake Superior basin-outstanding international resource water as defined in subrule (7) of this rule and if the BCC of concern is a LSB-BSIC, then the requirements of paragraph (ii) of this subdivision do not apply. If the pollution prevention alternatives implemented under paragraph (i) of this subdivision do not eliminate the new or increased loading of the LSB-BSIC to a Lake Superior basin-outstanding international resource water, then the discharger shall evaluate and implement the best technology in process and treatment (BTPT) that would eliminate or reduce the new or increased loading of the LSB-BSIC. BTPT shall be the most advanced treatment techniques which have been adequately demonstrated and which are reasonably available to the discharger. However, innovative or experimental technology shall also be considered if proposed by the discharger. Upon determination by the permittee, the requirement to implement BTPT may be waived by the department for new or increased loadings of LSB-BSICs that occur as trace contaminants in naturally occurring raw materials at the facility. If the BTPT requirement is waived, then the requirements of paragraph (ii) of this subdivision shall apply.

(5) If the department determines that the ~~antidegradation~~ demonstration information from subrule (4) of this rule shows that lowering of water quality is necessary to support important social and economic development in the area and that, if applicable, BTPT will be implemented consistent with subrule (4)(b)(iii) of this rule, then the department shall authorize the lowering of water quality through issuance of the control document. In no event may this decision allow water quality to be lowered below the minimum level required to fully support the designated uses. The ~~antidegradation~~ demonstration shall be available to the public for review during any public comment period on the control document.

(6) If high quality water bodies are designated outstanding state resource waters (OSRW) by the department, then controls shall be applied on pollutant sources to the OSRW or tributaries so that the water quality is not lowered in the OSRW. A short-term, temporary, for example, weeks or months, lowering of water quality in the OSRW may be permitted by the department on a case-by-case basis. The following water bodies are designated as OSRWs:

(a) The following water bodies designated as wild rivers pursuant to the Michigan scenic rivers act of 1991, 16 U.S.C. § 1271 et seq.

(i) The Carp river (Mackinac county) -- the 7.5-mile segment from Michigan state highway 123, T42N, R5W, section 2, to 1/4 of a mile upstream from forest development road 3119, T42N, R4W, section 4.

(ii) The Carp river (Mackinac county) -- the 4.9-mile segment from 1/4 of a mile

downstream of forest development road 3119, T42N, R4W, section 3, to McDonald rapids.

(iii) The east branch of the Ontonagon river (Houghton and Ontonagon counties) -- the 25.5-mile segment from the east branch of the Ontonagon river's confluence with an unnamed stream in T48N, R37W, section 30, to the Ottawa national forest boundary, T50W, R38W, section 33.

(iv) The middle branch of the Ontonagon river (Ontonagon county) -- the 17.4-mile segment from Trout creek, T48N, R38W, section 20, to the northern boundary of the Ottawa national forest, T50N, R39W, section 12.

(v) The Sturgeon river (Baraga and Houghton counties) -- the 16.5-mile segment from the Sturgeon river's entry into the Ottawa national forest, T48N, R35W, section 12, to Prickett lake.

(vi) The east branch of the Tahquamenon river (Chippewa county) -- the 3.2-mile segment from the center of T46N, R6W, section 20, to the boundary of the Hiawatha national forest, T46N, R6W, section 19.

(vii) The Yellow Dog river (Marquette county) -- the 4-mile segment from the Yellow Dog river's origin at the outlet of Bulldog lake dam, T50N, R29W, section 31, to the boundary of the Ottawa national forest, T50N, R29W, section 17.

(b) The main, north, south, east, and west branches of the Two-Hearted river and Dawson creek from their headwaters to the mouth of the river at Lake Superior, which are designated as wilderness rivers pursuant to part 305 of Act No. 451 of the Public Acts of 1994, as amended, being § 324.30501 et seq. of the Michigan Compiled Laws.

(c) Water bodies within the designated boundaries of the following national parks or national lakeshores:

(i) Sleeping bear dunes national lakeshore.

(ii) Pictured rocks national lakeshore.

(iii) Isle royale national park.

(7) All surface waters of the Lake Superior basin that are not identified in OSRWs are designated as Lake Superior basin -- outstanding international resource waters (LSB-OIRW). Under the LSB-OIRW designation, new or increased loadings of any LSB-BSIC from point sources to the surface waters of the Lake Superior basin are prohibited unless the new or increased loading of a LSB-BSIC is consistent with the requirements of this rule.

(8) Except for water bodies designated as OSRWs, or as the department may determine on a case-by-case basis that the application of the procedures in this rule are required to adequately protect water quality, the following do not constitute a lowering of water quality.

(a) The short-term, temporary, for example, weeks or months, lowering of water quality.

(b) Bypasses that are not prohibited by regulations set forth in 40 C.F.R. § 122.41(m) (1995).

(c) Response actions undertaken to alleviate a release into the environment of pollutants that may pose an imminent and substantial danger to the public health or welfare under any of the following:

(i) The comprehensive environmental response, compensation and liability act of 1980, (CERCLA), as amended, 42 U.S.C. § 9601 et seq.

(ii) The resource conservation and resource recovery act of 1976, as amended, 42 U.S.C.

§ 6901 et seq.

(iii) Part 201 of Act No. 451 of the Public Acts of 1994, as amended, being §§ 324.20101 to 324.20141 of the Michigan Compiled Laws.

(iv) Part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §§ 324.21301 to 324.21331 of the Michigan Compiled Laws.

(v) Part 31 of Act No. 451 of the Public Acts of 1994, as amended, being §§ 324.3101 to 324.3119 of the Michigan Compiled Laws.

(d) Discharges of pollutant quantities from the intake water at a facility proposing a new or increased loading of a pollutant, if the intake and discharge are on the same body of water.

(e) Increasing the sewered area, connecting new sewers and customers, or accepting trucked-in wastes, such as septage and holding tank wastes, by a publicly owned treatment works, if the increase is within the design flow of the facility, there is no increased loading due to nondomestic wastes from a significant industrial user for BCCs that are not specifically limited in the current permit, and there is no significant change expected in the characteristics of the wastewater collected.

(f) Intermittent increased loadings related to wet-weather conditions.

(g) New or increased loadings due to implementation of department-approved industrial or municipal controls on wet-weather related flows, including combined sewer overflows and industrial storm water.

(h) New or increased loadings authorized by certificates of coverage under NPDES general permits and notices of coverage for storm water from construction activities.

(i) Increased non-BCC loadings within the authorized levels of a limit in an existing control document.

(j) Increased BCC loadings within the authorized levels of a limit in an existing control document, except for those BCC loadings that result from actions by the permittee that would otherwise require submittal of an increased use request.

(k) New or increased loadings at a site where there is a simultaneous enforceable decrease in the allowed loading of the pollutant under consideration from sources contributing to the receiving water body, such that there is no net increase in the loading of the pollutant to the water body at that site consistent with trading rules established by the department.

(9) Except for water bodies designated as OSRWs, the following do not constitute a lowering of water quality:

(a) Increased discharges within the existing capacity and processes that are covered by the existing applicable control document, including the following:

(i) Normal operational variability.

(ii) Changes in intake water pollutants.

(iii) Increasing the production hours of the facility, for example, adding a second shift.

(iv) Increasing the rate of production.

(b) Changes in a control document that are not a result of changes in pollutant loading, but are the result of any of the following:

(i) Improved monitoring data.

(ii) New or improved analytical methods or sensitivity.

(iii) New or modified water quality values.

(c) Increased loadings of a pollutant which do not involve a BCC and which use less than

10% of the unused loading capacity that exists at the time of the request.

History: 1954 ACS 77, Eff. Dec. 13, 1973; 1979 AC; 1986 MR 11, Eff. Dec. 2, 1986; 1997 MR 7, Eff. July 29, 1997; 1999 AC; 1999 MR 3, Eff. Apr. 2, 1999.

Citation: Department of Environmental Quality, Water Resources Protection, R 323.1041 - R 323.1117

Jurisdiction: Michigan **Document Date:** July 29, 1997 **Page Count:** 3

Section Title: R 323.1103 Variances (Integrated)

Subject water, surface water, water quality, permitting, variance, discharge,

Terms: administrative

Source: Integrated Document

R 323.1103. Variances.

Rule 103. (1) A variance may be granted from any water quality standard (WQS) that is the basis of a water quality-based effluent limitation in a national pollutant discharge elimination system (NPDES) permit, as restricted by the following provisions:

- (a) A WQS variance applies only to the permittee or permittees requesting the variance and only to the pollutant or pollutants specified in the variance. The variance does not modify the water quality standards for the water body as a whole.
 - (b) A variance shall not apply to new dischargers unless the proposed discharge is necessary to alleviate an imminent and substantial danger to the public health or welfare.
 - (c) A WQS variance shall not be granted that would likely jeopardize the continued existence of any endangered or threatened species listed under section 4 of the endangered species act or result in the destruction or adverse modification of the species' critical habitat.
 - (d) A WQS variance shall not be granted if the standard in the receiving water will be attained by implementing the treatment technology requirements under the clean water act of 1972, as amended, 33 U.S.C. §§ 301(b) and 306, and by the discharger implementing cost-effective and reasonable best management practices for nonpoint sources over which the discharger has control within the vicinity of the facility.
 - (e) The duration of a WQS variance shall not exceed the term of the NPDES permit. If the time frame of the variance is the same as the permit term, then the variance shall stay in effect until the permit is reissued or revoked.
- (2) A variance may be granted if the permittee demonstrates to the department that attaining the WQS is not feasible for any of the following reasons:
- (a) Naturally occurring pollutant concentrations prevent the attainment of the WQS.
 - (b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the WQS.
 - (c) Human-caused conditions or sources of pollution prevent the attainment of the WQS and cannot be remedied or more environmental damage would occur in correcting the conditions or sources of pollution than would occur by leaving the conditions or sources in place.

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the WQS, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the WQS.

(e) Physical conditions related to the natural features of the water body preclude attainment of WQS.

(f) Controls more stringent than the treatment technology requirements in the clean water act of 1972, as amended, 33 U.S.C. §§ 301(b) and 306 would result in unreasonable economic effects on the discharger and affected communities.

(3) In addition to the requirements of subrule (2) of this rule, a permittee shall do both of the following:

(a) Show that the variance requested conforms to the ~~antidegradation~~ demonstration requirements of R 323.1098.

(b) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with WQS without the variance in a way that enables the department to conclude that the increased risk is consistent with the protection of the public health, safety, and welfare.

(4) A permittee may request a variance when a NPDES permit application is submitted or during permit development. A variance request may also be submitted with a request for a permit modification. The variance request to the department shall include the following information:

(a) All relevant information which demonstrates that attaining the WQS is not feasible based on 1 or more of the conditions in subrule (2) of this rule.

(b) All relevant information which demonstrates compliance with subrule (3) of this rule.

(5) The variance request shall be available to the public for review during the public comment period on the draft NPDES permit. The preliminary decision regarding the variance shall be included in the public notice of the draft NPDES permit. The department will notify the other Great Lakes states of the preliminary variance decision.

(6) If the department determines, based on the conditions of subrules (2) and (3) of this rule, that the variance request demonstrates that attaining the WQS is not feasible, then the department shall authorize the variance through issuance of the NPDES permit. The permit shall contain all conditions needed to implement the variance, including, at a minimum, all of the following conditions:

(a) That compliance with an effluent limitation that, at the time the variance is granted, represents the level currently achievable by the permittee. For an existing discharge, the effluent limitation shall be no less stringent than that achieved under the previous permit.

(b) That reasonable progress be made in effluent quality toward attaining the water quality standards. If the variance is approved for any BCC, a pollutant minimization program shall be conducted consistent with the provisions in paragraphs (i) through (iv) of R 323.1213(d). The department shall consider cost-effectiveness during the development and implementation of the pollutant minimization program.

(c) That if the duration of a variance is shorter than the duration of a permit, then compliance with an effluent limitation that is sufficient to meet the underlying water quality standard shall be achieved when the variance expires.

(7) The department shall deny a variance request through action on the NPDES permit if a permittee fails to make the demonstrations required under subrules (2) and (3) of this rule.

(8) A variance may be renewed, subject to the requirements of subrules (1) through (7) of this rule. As part of any renewal application, a permittee shall again demonstrate that attaining WQS is not feasible based on the requirements of subrules (2) and (3) of this rule. A permittee's application shall also contain information concerning the permittee's compliance with the conditions incorporated into the permittee's permit as part of the original variance pursuant to subrule (6) of this rule.

(9) Notwithstanding the provision in subrule (1)(a) of this rule, the department may grant multiple discharger variances. If the department determines that a multiple discharger variance is necessary to address widespread WQS compliance issues, including the presence of ubiquitous pollutants or naturally high background levels of pollutants in a watershed, then the department may waive the variance demonstration requirements in subrules (2), (3), and (4) of this rule. A permittee that is included in the multiple discharger variance will be subject to the permit requirements of subrule (6) of this rule if it is determined under R 323.1211 that there is reasonable potential for the pollutant to exceed a permit limitation developed under R 323.1209.

History: 1997 MR 7, Eff. July 29, 1997.

Citation: Department of Environmental Quality, Water Resources Protection, R 323.1201 - R 323.1221

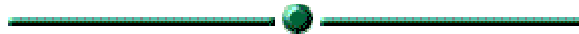
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Section Title: R 323.1215 Special Conditions for Bioaccumulative Chemicals of Concern (BCCs) (Integrated)

Subject water, water quality, effluent limitation, point source, discharge, NPDES,

Terms: permitting, administrative

Source: Integrated Document



R 323.1215. Special conditions for bioaccumulative chemicals of concern (BCCs).

Rule 1215. Conditions shall be established in national pollutant discharge elimination system (NPDES) permits that require the permittee to monitor for BCCs expected to be present in the discharge as a result of operations at the facility. The permit shall also contain a provision, consistent with R 323.1098, that prohibits the permittee from undertaking any action that would result in a lowering of water quality from an increased loading of a BCC unless an increased use request, including an ~~antidegradation~~ demonstration, has been submitted and approved by the department. The permit shall also require that the department be notified within 10 days of the permittee becoming aware that a lowering of water quality from an increased loading of a BCC has occurred.

History: 1997 MR 7, Eff. July 29, 1997; 1999 AC.